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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JACQUELINE CAVALIER NELSON,  
ANTOINETTE ARELLANO, MELVIN  
BACON, MARY BANDINI, AIMEE  
BECERRA, ALEXIS BILITCH, STACY  
BRANSON, SHANNON CAMPBELL,  
ARMANDO COLON, ALONSO  
ESPINOZA, DIANA FLORES, CAMILLE  
HERNANDEZ, STEFANIE JOHANSEN,  
JUANA LOPEZ, LOUELLA MAUBAN,  
GRETCHEN NIELSON, JEDDY REED,  
SUZANNE QUEDADO and MICHELLE  
THIEBOLD, individuals, on behalf of  
themselves, and on behalf of all persons  
similarly situated,

Plaintiffs,

vs.

AVON PRODUCTS, INC., a New York  
Corporation; and DOES 1 through 50  
inclusive,

Defendants.

CASE No. **CV13-02276 BLF**

**PLAINTIFFS' NOTICE OF  
MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT;**

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT**

Hearing Date: September 22, 2016

Hearing Time: 9:00 a.m.

Judge: Hon. Beth Labson Freeman

San Jose Courthouse,  
Courtroom 3 - 5th Floor  
280 South 1st Street, San Jose, CA  
95113

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** on September 22, 2016, at 1:30 p.m. in the United States District Court for the Northern District of California, located at the San Jose Courthouse, Courtroom 3 - 5th Floor, 280 South 1st Street, San Jose, CA 95113, before the Honorable Beth Labson Freeman, Plaintiffs Jaqueline Cavalier Nelson, Alonso Espinoza, Gretchen Nielson, Juana Lopez, Melvin Bacon, Shannon Campbell, Alexi Bilitch, Mary Bandini, Antoinette Arellano, Aimee Becerra, Stacy Branson, Armando Colon, Diana Flores, Samille Hernandez, Stefanie Johansen, Louella Mauban, Jeddy Reed, Suzanne Quedado and Michelle Thiebold (collectively "Named Plaintiffs"), will move and hereby does move for preliminary approval of the proposed Class Settlement with Defendant Avon Products, Inc. ("Avon"). This motion is unopposed as based on the Settlement Agreement and Release (the "Agreement") between the parties filed concurrently with this motion.

The motion will be based on this Notice of Motion and the attached Memorandum of Points and Authorities filed herewith, the Declaration of Kyle Nordrehaug and attached exhibits, the argument of counsel and upon such other material contained in the file and pleadings of this action.

Respectfully submitted,

Dated: August 18, 2016

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal  
 Norman B. Blumenthal  
 Kyle R. Nordrehaug  
 Attorneys for Plaintiffs

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

Named Plaintiffs respectfully submit this memorandum of points and authorities in support of the motion for preliminary approval of settlement of the class action.

### **I. INTRODUCTION**

Named Plaintiffs and Defendant Avon Products, Inc. ("Avon") have reached a full and final settlement of the above-captioned class action, which is embodied in the Settlement Agreement and Release (the "Agreement") filed concurrently with the Court as Exhibit 1 to the Declaration of Kyle Nordrehaug ("Decl. Nordrehaug").<sup>1</sup> By this motion, Named Plaintiffs seek preliminary approval of the Agreement as fair, reasonable and adequate, entry of the Preliminary Approval Order, and scheduling of the Final Approval Hearing to determine final approval of the Settlement.

### **II. DESCRIPTION OF THE SETTLEMENT**

Counsel for the Parties, after significant litigation and contentious settlement negotiations, agreed to a settlement that is fair, reasonable and favorable to the Settlement Class, which is defined as: "all individuals who worked for Avon as a full or part-time, active California District Sales Manager for at least one day during the period from April 8, 2009 to March 31, 2016." (Agreement at ¶ 2.20.) This Court previously certified the class as set forth in the Order dated April 17, 2015 [Doc.No.70]. Decl. Nordrehaug, ¶3.

Under the terms to which the Parties have agreed, Defendant agrees to pay One Million Eight Hundred Thousand Dollars (\$1,800,000.00) (the "Settlement Fund") in consideration for the settlement and the release of the Releases Claims as described in the Agreement. The Settlement Fund will fund: (i) the Settlement Payments to the Settlement Class; (ii) any reasonable award of attorneys' fees of up to one-third of the Settlement Fund and costs to Class Counsel not to exceed \$70,000; (iii) the Claims

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<sup>1</sup> Capitalized terms in this Memorandum have the same meaning as contained in Section II of the Stipulation.

1 Administration Expenses; (iv) the Service Payments to the Named Plaintiffs; (v) the  
2 PAGA Payment of \$10,000; and, (vi) the employee's and employer's share of applicable  
3 payroll taxes under federal, state and/or local laws. (Agreement at ¶ 8.) Decl.  
4 Nordrehaug, ¶4.

5 As per Paragraph 9 of the Agreement, the Class Monetary Award Fund is the  
6 Settlement Fund less distributions for attorneys' fees and costs, claims administration  
7 expenses, service payments and PAGA Payment. The Class Monetary Award Fund will  
8 be allocated to the Settlement Class as follows: (i) A fixed weekly amount for monetary  
9 payments ("Weekly Amount") will be calculated by dividing the Class Monetary Award  
10 Fund by the total amount of Workweeks (as defined in Paragraph 2.25) worked by each  
11 Settlement Class Member in a Class-Eligible Job (as defined in Paragraph 2.6) during  
12 the Settlement Period; (ii) Settlement Class Members will receive an amount equal to the  
13 Weekly Amount multiplied by the number of weeks the Settlement Class Member  
14 worked in a Class-Eligible Job during the Settlement Period, less applicable  
15 withholdings and deductions. (Agreement at ¶ 9.4.) Decl. Nordrehaug, ¶5.

16 This is an excellent result for the members of the Class. The litigation risks that  
17 the Class Representatives and Class Members face if the case were not settled include,  
18 among other things, Defendant prevailing on decertification, an adverse decision on the  
19 merits, loss of motions which would result in limiting any exposure, and the possibility  
20 that a jury would return a less favorable verdict. Liability in this case was uncertain  
21 because a jury may have found that some or all of the Class Members may have been  
22 exempt from overtime requirements. Indeed, some courts have found exemptions to  
23 apply in cases involving similar facts. Decl. Nordrehaug, ¶6. Moreover, there was  
24 further uncertainty as to whether class certification could have been maintained  
25 throughout the trial. These defenses could have reduced the amount recovered or denied  
26 a recovery altogether to the members of the Class. Class Counsel and Named Plaintiffs  
27 wish to avoid these risks and uncertainties, as well as the consumption of time and  
28 resources of litigation, through settlement pursuant to the terms and conditions of the



1 Settlement Agreement. Decl. Nordrehaug, ¶6.

2 **III. NATURE OF THE CASE**

3 Named Plaintiff Jaqueline Cavalier Nelson filed a Class Action Complaint against  
4 Avon in Superior Court of the State of California for the County of Santa Cruz on April  
5 8, 2013. The action was removed by Avon to the United States District Court for the  
6 Northern District of California on May 17, 2013. The class action lawsuit asserted, inter  
7 alia, claims that Avon's District Sales Managers in California are entitled to overtime pay  
8 under California labor laws. Decl. Nordrehaug, ¶7.

9 Named Plaintiff Jaqueline Cavalier Nelson filed a First Amended Complaint on  
10 September 11, 2013 and a Second Amended Complaint on January 7, 2014. The Second  
11 Amended Complaint added 18 named plaintiffs and asserted class claims under  
12 California Labor Code, California Business and Professions Code and PAGA. Decl.  
13 Nordrehaug, ¶8.

14 On April 17, 2015, the Court certified a class action pursuant to Federal Rule of  
15 Civil Procedure 23, appointed Blumenthal, Nordrehaug & Bhowmik as class counsel and  
16 approved the designation of the Named Plaintiffs as class representatives. On November  
17 4, 2015, the Court granted the parties' joint stipulation regarding the class notice. The  
18 notice was addressed to all individuals who currently work, or previously worked, for  
19 Avon as a California District Sales Manager at any time since April 8, 2009, and  
20 enclosed a request for exclusion form for individuals to submit to be excluded from the  
21 Civil Action. In response, seven individuals opted out of the Civil Action by filing a  
22 timely request for exclusion form. Decl. Nordrehaug, ¶9.

23 In the course of litigating the Civil Action, Avon provided payroll and  
24 employment data regarding the Class Members to Named Plaintiffs and Class Counsel.  
25 Named Plaintiffs served extensive written discovery on Avon, fifteen (15) different  
26 witnesses were deposed by the parties, and Class Counsel also interviewed many Class  
27 Members. Based on this data, and their own independent investigation and evaluation,  
28 Class Counsel has thoroughly analyzed the value of the Class Members' claims during



1 the prosecution of this Civil Action. This discovery, investigation, and prosecution has  
2 included, among other things, (a) multiple meetings and conferences with Named  
3 Plaintiffs; (b) inspection and analysis of the documents and materials produced by  
4 Named Plaintiffs and Avon; (c) analysis of the various legal positions taken and defenses  
5 raised by Avon; (d) investigation and law and motion regarding class treatment of the  
6 claims; (e) analysis of potential class-wide damages; (f) research of the applicable law  
7 with respect to the claims asserted in the Complaint and the potential defenses thereto;  
8 (g) the exchange of information through formal informal discovery; (h) multiple  
9 depositions of witnesses from both parties; and (i) assembling data for calculating  
10 damages, including retaining an expert for this calculation. The discovery conducted in  
11 this matter, as well as discussions between counsel, have been more than sufficient to  
12 give the Named Plaintiffs and Class Counsel a sound understanding of the merits of their  
13 positions and to evaluate the worth of the claims of the Class Members in light of the  
14 defenses to them. Named Plaintiffs and Class Counsel believes that the settlement with  
15 Avon for the consideration and on the terms set forth in the Agreement is fair,  
16 reasonable, and adequate and is in the best interest of the Class in light of all known facts  
17 and circumstances, including the risk of significant delay, the likelihood that Avon  
18 would prevail on its defenses, and numerous potential appellate issues. Decl.  
19 Nordrehaug, ¶10.

20 Avon does not admit any liability and denies and wrongdoing and denied that the  
21 Class Members are entitled to any damages. Avon denies any and all allegations relating  
22 to this matter, including, amount other things, that it has improperly classified its District  
23 Sales Managers as exempt from overtime compensation, failed to pay wages or overtime  
24 compensation to its District Sales Managers, or that it otherwise violated its legal  
25 obligations. Avon believes in good faith that its District Sales Managers have always  
26 been and continue at the present time to be properly classified as exempt from federal  
27 and state overtime requirements and not owed any overtime compensation. Avon has  
28 asserted several affirmative defenses, including that the claims were based on

1 individualized facts and were not appropriate for class certification. Avon maintains that  
2 it has acted lawfully at all times. Decl. Nordrehaug, ¶11.

3 On December 10, 2015, the Parties participated in a good-faith, arms-length  
4 mediation presided over by Christine Masters, a respected and experience mediator of  
5 wage and hour class actions. At the mediation session, the parties were unable to reach  
6 a settlement. Mediator Masters continued to negotiate with the parties over the next  
7 couple months and was ultimately able to reach a settlement between the Parties through  
8 a mediator's proposal which the Parties accepted. Based on the mediator's proposal and  
9 these negotiations, the Parties agreed to settle the Civil Action and signed a  
10 Memorandum of Understanding. The Parties then negotiated and prepared the  
11 Agreement which sets forth the final terms of Settlement for this Court's consideration.  
12 Decl. Nordrehaug, ¶12.

#### 13 **IV. PLAN OF ALLOCATION**

14 To implement the terms of this Settlement, Defendant agrees to pay the Settlement  
15 Fund of One Million Eight Hundred Thousand Dollars and No Cents (\$1,800,000.00)  
16 in full and complete satisfaction of all Released Claims. (Agreement at ¶ 7.1.) The  
17 Settlement Fund will fund: (i) the Settlement Payments to the Settlement Class; (ii) any  
18 award of reasonable attorneys' fees and costs to Class Counsel; (iii) the Claims  
19 Administration Expenses; (iv) the Service Payments to the Named Plaintiffs; and (v) the  
20 PAGA Payment. (Agreement at ¶ 8.) Decl. Nordrehaug at ¶13.

21 As per Paragraph 9 of the Agreement, the Class Monetary Award Fund is the  
22 Settlement Fund less distributions for attorneys' fees and costs, claims administration  
23 expenses, service payments and PAGA Payment. The Class Monetary Award Fund will  
24 be allocated to the Settlement Class as follows: (i) A fixed weekly amount for monetary  
25 payments ("Weekly Amount") will be calculated by dividing the Class Monetary Award  
26 Fund by the total amount of Workweeks (as defined in Paragraph 2.25) worked by each  
27 Settlement Class Member in a Class-Eligible Job (as defined in Paragraph 2.6) during  
28 the Settlement Period; (ii) Settlement Class Members will receive an amount equal to the

Weekly Amount multiplied by the number of weeks the Settlement Class Member worked in a Class-Eligible Job during the Settlement Period, less applicable withholdings and deductions. (Agreement at ¶ 9.4.) Decl. Nordrehaug at ¶14.

Each Settlement Class Member shall receive a Settlement Payment based on his or her number of Workweeks during the Settlement Period based on the above formula. (Agreement at ¶ 7.2.) No affirmative conduct or participation by a Settlement Class Member who meets the Settlement Class definition is required to receive a monetary award. (Agreement at ¶ 9.4(iv).) No later than sixty (60) days after the Effective Date, the Claims Administrator shall mail the monetary award checks to Settlement Class Members. (Agreement at ¶ 9.5.) All checks sent to Settlement Class Members that remain uncashed after 180 days will be paid to the DLSE Unpaid Wage Fund in the name of the Settlement Class Member. (Agreement at ¶ 7.8.) Decl. Nordrehaug at ¶15.

Subject to Court approval, the Parties have agreed that Gilardi & Co., LLC will be appointed as Claims Administrator. (Agreement at ¶ 2.3.) All administrative fees, costs and expenses incurred by the Claims Administrator in connection with administering the Settlement will be deducted from the Settlement Fund. (Agreement at ¶ 8.5.) Decl. Nordrehaug at ¶16.

Class Counsel will apply to the Court for an award of an amount up to one-third (1/3) of the Settlement Fund for reasonable attorneys' fees, and for reimbursement of litigation costs not to exceed \$70,000. (Agreement at ¶ 8.2.) Named Plaintiffs will also apply approval of Service Payments in an amount not to exceed \$10,000 for Jacqueline Nelson and \$5,000 for the other Named Plaintiffs. (Agreement at ¶ 8.8.) The motion shall be scheduled for determination at the Final Approval Hearing but will be filed and served before the end of the objection period. Decl. Nordrehaug at ¶17.

## **V. THE SETTLEMENT MEETS ALL CRITERIA NECESSARY FOR PRELIMINARY APPROVAL**

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. Fed. R. Civ. P. 23(e)(1)(A); 2 H. Newberg & A.

1 Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87. Preliminary  
 2 approval is the first of three steps that comprise the approval procedure for settlements  
 3 of class actions. See e.g. *Louie v. Kaiser Found. Health Plan, Inc.*, 2008 U.S. Dist.  
 4 LEXIS 78314 (S.D. Cal. 2008). The second step is the dissemination of notice of the  
 5 settlement to all class members. The third step is a final settlement approval hearing, at  
 6 which evidence and argument concerning the fairness, adequacy, and reasonableness of  
 7 the settlement may be presented and class members may be heard regarding the  
 8 settlement. See *Manual for Complex Litigation*, Second §30.44 (1993).

9 The question presented on a motion for preliminary approval of a proposed class  
 10 action settlement is whether the proposed settlement is "within the range of possible  
 11 approval." *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*,  
 12 690 F.2d 616, 621 n.3 (7th Cir. 1982); *Louie, supra*, at \*7. Preliminary approval is  
 13 merely the prerequisite to giving notice so that "the proposed settlement . . . may be  
 14 submitted to members of the prospective Class for their acceptance or rejection."  
 15 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323  
 16 F. Supp. 364, 372 (E.D. Pa. 1970). There is an initial presumption of fairness when a  
 17 proposed settlement, which was negotiated at arm's length by Class Counsel, is presented  
 18 for court approval. *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate question  
 19 of whether the proposed settlement is fair, reasonable and adequate is made after notice  
 20 of the settlement is given to the class members and a final settlement hearing is held by  
 21 the Court.

## 22 **A. The Role Of The Court In Preliminary Approval Of A Class Action** 23 **Settlement**

24 The approval of a proposed settlement of a class action suit is a matter within the  
 25 broad discretion of the trial court. *Staton v. Boeing*, 327 F.3d 938, 959 (9th Cir. 2003).  
 26 Preliminary approval does not require the trial court to answer the ultimate question of  
 27 whether a proposed settlement is "fair, reasonable and adequate." *In re Jiffy Lube Sec.*  
 28 *Litig.*, 927 F.2d 155, 158 (4th Cir. 1991); *Manual for Complex Litigation*, Third, §§

20.212. That determination is made only after notice of the settlement has been given to the members of the class and after the class members have been given an opportunity to voice their views of the settlement or to be excluded from the settlement class. See, e.g., 3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003).

In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute (*Detroit v. Grinnell Corp.*, 495 F.2d 448, 456 (2d Cir. 1974)), and need not engage in a trial on the merits. *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983). The court is not required to determine that certification of a settlement class is appropriate until the final settlement approval. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 797 (3d Cir. 1995).

The question of whether a proposed settlement is fair, reasonable and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, many courts recognize that the opinion of experienced counsel supporting the settlement is entitled to considerable weight. *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger*, 698 F.2d at 74; *Armstrong v. Board of School Directors*, 616 F.2d 305, 325 (7th Cir. 1980); *Fisher Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985). For example, in *Lyons v. Marrud, Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the court noted that “[e]xperienced and competent counsel have assessed these problems and the probability of success on the merits. They have concluded that compromise is well-advised and necessary. The parties’ decision regarding the respective merits of their position has an important

bearing on this case." *Id.* at ¶ 92,520.

## **B. Factors To Be Considered In Granting Preliminary Approval**

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. No one factor should be determinative, but rather all factors should be considered. These criteria have been summarized as follows:

“If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2011), citing *Manual of Complex Litigation*, Second §30.44. Here, the settlement meets all of these criteria.

### **1. The Settlement is the Product of Serious, Informed and Noncollusive Negotiations**

This settlement is the result of extensive and hard fought negotiations. Defendant denies each and every one of the claims and contentions alleged in this Litigation. Defendant has asserted and continues to assert many defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Nonetheless, Defendant has concluded that this Litigation be settled in the manner and upon the terms and conditions set forth in the Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and the uncertainties of trial and appeals. Defendant has decided to put to rest the alleged claims of the Settlement Class.

Settlement negotiations took place between experienced counsel. Counsel for the Parties, after formal mediation and settlement negotiations conducted over several months, reached an agreement on a mediator’s proposal, based upon the experience of counsel and the uncertainties of protracted litigation. Most importantly, Named Plaintiffs and Class Counsel believe that this settlement is fair, reasonable and adequate.



1 By reason of the settlement, Defendant agrees to pay the Settlement Fund of One Million  
2 Eight Hundred Thousand Dollars (\$1,800,000.00) in full settlement of the alleged claims.  
3 (Agreement at ¶ 7.1.)

4 Class Counsel has conducted a thorough investigation into the facts of the class  
5 action, including a review of relevant documents and data and a diligent investigation  
6 of the Class Members' claims against Avon. Class Counsel also retained an expert to  
7 prepare a damage valuation in advance of mediation. Based on the foregoing documents  
8 and data, and their own independent investigation and evaluation, Class Counsel is of the  
9 opinion that the settlement with Avon for the consideration and on the terms set forth in  
10 the Agreement is fair, reasonable, and adequate in light of all known facts and  
11 circumstances, including the risk of significant delay, defenses asserted by Defendant,  
12 and numerous potential appellate issues. The parties and their counsel recognize that,  
13 in the absence of an approved settlement, they would face a protracted litigation course,  
14 including a motion for decertification, motions for summary judgment, and trial and  
15 appellate proceedings that would consume time and resources and present each of them  
16 with ongoing litigation risks and uncertainties. Decl. Nordrehaug, ¶18.

17 Named Plaintiffs and Class Counsel recognize the expense and length of  
18 continuing to litigate and trying this Litigation against Avon through possible appeals  
19 which could take several years. Class Counsel has also taken into account the uncertain  
20 outcome and risk of litigation, especially in complex actions such as this litigation. Class  
21 Counsel is also mindful of and recognize the inherent problems of proof under, and  
22 alleged defenses to, the claims asserted in the Litigation. Based upon their evaluation,  
23 Named Plaintiffs and Class Counsel have determined that the settlement set forth in the  
24 Agreement is in the best interest of the Class Members. Decl. Nordrehaug, ¶19.

25 Here the negotiations have been hard-fought and aggressive with capable  
26 advocacy on both sides. Decl. Nordrehaug, ¶19. Accordingly, "[t]here is likewise every  
27 reason to conclude that settlement negotiations were vigorously conducted at arms'  
28 length and without any suggestion of undue influence." *In re Wash. Public Power*



1 *Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989).

2 **2. The Settlement Has No "Obvious Deficiencies" and Falls Within**  
 3 **the Range for Approval**

4 The proposed Settlement herein has no "obvious deficiencies" and is well within  
 5 the range of possible approval. All Settlement Class Members will receive an  
 6 opportunity to participate in and receive payment according to the same formula.

7 In advance of negotiations, Class Counsel received class data concerning  
 8 employment and payroll information, which permitted Class Counsel to make an  
 9 intelligent evaluation. Decl. Nordrehaug at ¶20. For the individuals whose claims are  
 10 at issue in this Litigation, Named Plaintiffs reviewed the data and used information  
 11 provided by Defendants to determine the potential damage valuation. With the  
 12 assistance of a damage expert, DM&A, Named Plaintiffs calculated the alleged overtime  
 13 damages they believed they would receive if they prevailed. Decl. Nordrehaug, ¶20.

14 The settlement of \$1,800,000, before deductions, represents more than 12% to  
 15 24% of the alleged overtime damages estimated by the Named Plaintiffs, assuming these  
 16 amounts could be proven in full at trial. Decl. Nordrehaug at ¶20. This settlement  
 17 amount is fair and reasonable given the significant liability problems. Specifically,  
 18 Avon's assertion of the overtime exemption was based on the administrative exemption.  
 19 Class Counsel has previously litigated similar claims wherein the District Court granted  
 20 summary judgment on the basis of the exemption. See e.g. *Gallardo v. AIG Domestic*  
 21 *Claims, Inc.*, 629 Fed. Appx. 783 (9<sup>th</sup> Cir. 2015); *Bucklin v. Am. Zurich Ins. Co.*, 2103  
 22 U.S. Dist. Lexis 86342 (C.D. Cal. 2013), affirmed by 619 Fed. Appx. 574 (9<sup>th</sup> Cir. 2015).  
 23 Therefore, because the alternative to this Settlement could likely be the Class receiving  
 24 nothing, Class Counsel accepted the mediator's proposal as fair and reasonable. Clearly  
 25 the goal of this litigation to obtain redress for the Class has been met. Decl. Blumenthal,  
 26 ¶20.

27 In *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. January 27,  
 28 2007) the federal district court for the Northern District of California recently approved

1 a settlement of an action claiming unpaid overtime wages where the settlement amount  
2 constituted approximately 25% of the estimated overtime damages the class. In  
3 *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at \*12 (N.D. Cal.  
4 2015), the District Court granted final approval where “the proposed Total Settlement  
5 Amount represents approximately 10% of what class might have been awarded had they  
6 succeeded at trial.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d  
7 454, 459 (9th Cir. 2000), the Court of Appeals affirmed the approval of a class  
8 settlement which represented “roughly one-sixth of the potential recovery”. Here the  
9 settlement consideration similarly constitutes a reasonable percentage of the estimated  
10 actual overtime damages for the Class.

11 Where both sides face significant uncertainty, the attendant risks favor settlement.  
12 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of  
13 defenses asserted by Defendants presented serious threats to the claims of Named  
14 Plaintiffs and the other Class Members. Defendant contends that Defendant’s  
15 employment practices complied with all applicable Labor laws.

16 For example, Defendants contended that Class Members were barred from  
17 recovery by the “administrative exemption”. For this exemption, Defendant argued that  
18 Class Members were primarily engaged in exempt duties which required the exercise of  
19 discretion and independent judgment. Defendants contended that Class Members’  
20 primary duty was work directly related to the management or general business operations  
21 of Avon. Federal decisions further support the claimed exemption. See *Hogan v.*  
22 *Allstate Ins. Co.*, 361 F.3d 621, 626-28 (11<sup>th</sup> Cir. 2004) (employees administratively  
23 exempt who serviced and advised existing customers, adapted customer’s policies to  
24 their needs, promoted sales, and hired and trained staff, among other duties); *Reich v.*  
25 *John Alden Life Ins. Co.*, 126 F.3d 1, 8-14 (1<sup>st</sup> Cir. 1997) (administrative exemption  
26 applied to insurance marketing representatives who represented company to third party  
27 agents, promoted sales, and kept informed about market to help match products with  
28 customer needs). There were also inherent problems with proof of damages, as Avon

1 argued there were no time records demonstrating overtime hours as Class members  
 2 primarily worked during normal business hours. Further, the Named Plaintiffs recognize  
 3 that the requirements of the administrative exemption under California law are much  
 4 more stringent than under federal law or any other state's laws. If successful,  
 5 Defendant's defenses could eliminate or substantially reduce any recovery to the Class.  
 6 While Named Plaintiffs believe that these defenses could be overcome, Defendants  
 7 maintain these defenses have merit and therefore present a serious risk to recovery by  
 8 the Class. Decl. Blumenthal at ¶21.

9 Moreover, there was also a significant risk that, if the Action was not settled,  
 10 Named Plaintiffs would be unable to maintain class certification through trial thereby not  
 11 recover on behalf of any employees other than themselves. At the time of the mediation,  
 12 Defendant forcefully opposed the propriety of class certification, arguing that individual  
 13 issues precluded class certification, and intended to move for decertification. While  
 14 other cases have approved class certification in wage and hour claims, class certification  
 15 in this action would have been hotly disputed and was by no means a foregone  
 16 conclusion. Decl. Blumenthal at ¶22.

17 After vigorous negotiations, the Parties agreed to the Settlement of \$1,800,000.  
 18 Recognizing the potential risks, both sides agreed. As the federal court recently held in  
 19 *Glass*, where the parties faced uncertainties similar to those here:

20 In light of the above-referenced uncertainty in the law, the risk, expense,  
 21 complexity, and likely duration of further litigation likewise favors the  
 22 settlement. Regardless of how this Court might have ruled on the merits of  
 23 the legal issues, the losing party likely would have appealed, and the parties  
 24 would have faced the expense and uncertainty of litigating an appeal. "The  
 expense and possible duration of the litigation should be considered in  
 evaluating the reasonableness of [a] settlement." See *In re Mego Financial*  
*Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

25 Here, the risk of further litigation is substantial.

### 26 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 27 **The Class Representative or Segments Of The Class**

28 The relief provided in the settlement will benefit all Settlement Class Members

equally. The settlement does not improperly grant preferential treatment to the Class Representative or any individual segments of the Class. Each Settlement Class Member, including the Plaintiff, will be entitled to cash payment based on the plan of allocation. Decl. Nordrehaug at ¶4. Each Settlement Class Member's Payment will be determined as follows:

(i) A fixed weekly amount for monetary payments ("Weekly Amount") will be calculated by dividing the Class Monetary Award Fund by the total amount of Workweeks (as defined in Paragraph 2.25) worked by each Class Representative and Settlement Class Member in a Class-Eligible Job (as defined in Paragraph 2.6) during the Settlement Period. (ii) A Class Representative or Settlement Class Member will receive an amount equal to the Weekly Amount multiplied by the number of weeks the Settlement Class Member worked in a Class-Eligible Job during the Settlement Period, less applicable withholdings and deductions. (Agreement at ¶ 9.4.) No affirmative conduct or participation by a Settlement Class Member who meets the Settlement Class definition is required to receive a monetary award. (Agreement at ¶ 9.4.) Decl. Nordrehaug at ¶14.

In addition, the Named Plaintiffs will apply to the trial court for a service award of \$10,000 for Jacqueline Nelson and \$5,000 for the other Named Plaintiffs. (Agreement at ¶ 8.8.) In *Glass*, the District Court awarded each of the class representatives in an overtime wages class action a service award of \$25,000. *Glass*, 2007 U.S. Dist. LEXIS 8476 at \*51-52. The payment of service award in this amount to the named plaintiff in a wage and hour class action is approved by settled authority, and the requested service award in the amounts of \$10,000 and \$5,000 are reasonable in this case in light of the amount approved in *Glass* and other decisions.

#### **4. The Stage Of The Proceedings Is Sufficiently Advanced To Permit Preliminary Approval Of The Settlement**

The stage of the proceedings at which this settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the settlement. Class

1 Counsel has conducted a thorough investigation into the facts of the class action. Class  
2 Counsel began investigating the Class Members' claims before this action was filed.  
3 Class Counsel propounded discovery, took depositions and interviewed Class Members.  
4 In advance of mediation, Defendant provided the information necessary for Class  
5 Counsel to intelligently negotiate a settlement. Decl. Nordrehaug at ¶23.

6 Class Counsel obtained production of employment and payroll records. Class  
7 Counsel engaged in an extensive review and analysis of the relevant documents and data.  
8 Class Counsel also examined the applicable law governing these claims and the  
9 exemption defense. Accordingly, the agreement to settle did not occur until Class  
10 Counsel possessed sufficient information to make an informed judgment regarding the  
11 likelihood of success on the merits and the results that could be obtained through further  
12 litigation. Decl. Nordrehaug at ¶23.

13 Based on the foregoing information and data and their own independent  
14 investigation and evaluation, Class Counsel is of the opinion that the settlement with  
15 Defendant for the consideration and on the terms set forth in the Agreement is fair,  
16 reasonable, and adequate and is in the best interest of the class in light of all known facts  
17 and circumstances, including the risk of significant delay, defenses asserted by  
18 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel  
19 for both parties possessed sufficient information to make an informed judgment  
20 regarding the likelihood of success on the merits and the results that could be obtained  
21 through further litigation. Decl. Nordrehaug at ¶24.

22 In *Glass*, the Northern District of California recently granted final approval of an  
23 overtime and meal wage action although in *Glass* no formal discovery had been  
24 conducted prior to the settlement:

25 Here, no formal discovery took place prior to settlement. As the Ninth  
26 Circuit has observed, however, "[i]n the context of class action settlements,  
27 'formal discovery is not a necessary ticket to the bargaining table' where the  
28 parties have sufficient information to make an informed decision about  
settlement." See *In re Mego Financial Corp. Securities Litigation*, 213 F.3d  
at 459.

1 2007 U.S. Dist. LEXIS 8476 at \*14.

2 Here, Class Counsel was in a better position to evaluate the fairness of this  
3 settlement as in *Glass* because they achieved class certification, conducted formal and  
4 informal discovery, as well as independent investigations, interviews and due diligence  
5 to confirm the accuracy of the information supplied by Avon.

6  
7 **VI. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT**  
8 **PURPOSES**

9 This Court previously certified the class of District Sales Managers finding that  
10 the Class satisfied the requirements of F.R.C.P. §23. This is the same class that is the  
11 Settlement Class in the Agreement. As a result, the Court need not recertify the class.  
12 See *Clayton v. Knight Transp.*, 2013 WL 5877213, 2013 U.S. Dist. LEXIS 156647, at  
13 \*10 (E.D. Cal. 2013). Decl. Nordrehaug, ¶25.

14 **VII. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

15 The Parties have agreed upon procedures by which the Settlement Class will be  
16 provided with written notice of the Settlement similar to that approved and utilized in  
17 hundreds of class action settlements. The Parties have jointly drafted a Class Notice,  
18 attached to the Agreement as Exhibit A and is hereby submitted for approval.

19 The Notice, drafted jointly and agreed upon by the Parties through their respective  
20 counsel, includes information regarding the nature of the Litigation; a summary of the  
21 substance of the Settlement, including Defendant's denial of liability; the definition of  
22 the Class; the procedure and time period for objecting to the Settlement, exclusion from  
23 the Settlement and participating in the Settlement; a statement that the District Court has  
24 preliminarily approved the Settlement; and information regarding the calculation of  
25 settlement shares. See Exhibit A to the Stipulation.

26 The Notice explains that Class Members who wish to participate in the settlement  
27 do not need to do anything, and a check will be mailed to them automatically after final  
28



1 approval. The Notice shall also provide that any Class Member may choose to opt out  
2 of the Class, and that any such person who chooses to opt out of the Class will not be  
3 entitled to any recovery obtained by way of the settlement and will not be bound by the  
4 settlement or have any right to object, appeal or comment thereon. Decl. Nordrehaug at  
5 ¶27.

6 The Notice will provide that all objections to the Settlement by anyone, including  
7 members of the Settlement Class, must be filed in the District Court and served upon all  
8 counsel of record by no later than forty-five (45) days from the mailing of the Notice.  
9 All objections must state with particularity the basis on which they are asserted. In  
10 accordance with *Mercury Interactive Corp. Secs. Litig. v. Mercury Interactive Corp.*, 618  
11 F.3d 988 (9th Cir 2010), the application for attorneys' fees and costs will be filed before  
12 the end of the objection period and posted on a website as indicated in the Notice. Thus,  
13 all Class Members will have ample opportunity to review and comment on the attorneys'  
14 fees and costs before the objection deadline. The attorneys' fees and costs will be heard  
15 in conjunction with the motion for final approval on the Final Approval Hearing date.  
16 Decl. Nordrehaug at ¶27.

17 The notice also informs members of the Settlement Class about the release.  
18 Specifically, the notice explains that unless they exclude themselves, upon final approval  
19 they will release all of the Released Claims. This notice program was designed to  
20 meaningfully reach the largest possible number of potential Settlement Class Members.  
21 The mailing and distribution of the Notice satisfies the requirements of due process, and  
22 is the best notice practicable under the circumstances and constitutes due and sufficient  
23 notice to all persons entitled thereto. Decl. Nordrehaug at ¶28.

24 This notice satisfies the content requirements for notice following the exemplar  
25 class notice in the *Manual for Complex Litigation*, Second §41.43. This notice also  
26 fulfills the requirement that Class notices be neutral. *Newberg*, at §8.39.

27  
28



**VIII. CONCLUSION**

Counsel for the Parties have committed substantial amounts of time, energy, and resources litigating and ultimately settling this case. In the judgment of Named Plaintiffs and Class Counsel, the proposed settlement is a fair and reasonable compromise of the issues in dispute in light of the strengths and weaknesses of each party's case. After weighing the certain and immediate benefits of these settlements against the uncertainty of trial, and appeal, Named Plaintiffs believe the proposed settlement is fair, reasonable and adequate, and warrants this Court's preliminary approval. Accordingly, Named Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and enter the proposed Preliminary Approval Order submitted herewith.

Dated: August 18, 2016

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal

Norman B. Blumenthal

Kyle R. Nordrehaug

Attorneys for Plaintiffs

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